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10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**
12

13 In the Matter of the Accusation Against:

Case No. **2010-262**

14 **ROSEMARY GONZALES-BUSTILLOS**
1880 Village Court
15 Hollister, California 95023

A C C U S A T I O N

16 **Registered Nurse License No. 625510**

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

- 21 1. Louise R. Bailey, M.Ed., R.N. (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing.
- 23 2. On or about September 5, 2003, the Board issued Registered Nurse License Number
24 625510 to Rosemary Gonzales-Bustillos (Respondent). The Registered Nurse License was in full
25 force and effect at all times relevant to the charges brought herein and will expire on October 31,
26 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2761, subdivision (a)(1) states, in pertinent part, that the Board may take disciplinary action against a certified or licensed nurse for unprofessional conduct, which includes, but is not limited to, incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

6. Title 16, California Code of Regulations, section 1442, defines "gross negligence" as an extreme departure from the standard of care which, under similar circumstances would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 CAUSES FOR DISCIPLINE

2 (Gross Negligence)

3 9. Respondent is subject to disciplinary action under Business and Professions Code
4 section 2761(a) on the grounds of unprofessional conduct (gross negligence), in that between on
5 or about April 25 and August 24, 2007, while employed as a registered nurse at Hazel Hawkins
6 Memorial Hospital Mabie Skilled Nursing Facility, in Hollister, California, respondent committed
7 the following acts and/or omissions:

8 A. Selma D.,¹ a 68 year old female, was a patient at Mabie Skilled Nursing Facility with
9 diagnoses that included dementia, stroke with left sided paralysis, history of seizure disorder and
10 neurogenic bladder. On or about April 10, 2007, urinalysis test results were negative for a urinary
11 tract infection (herein, "UTI"). On or about April 24, 2007, Selma D.'s daughter, Debbie G., who
12 was familiar with her mother's medical history, and a vocal advocate with power of attorney,
13 observed a behavior change in her mother which included increased agitation, discomfort, and
14 confusion. Debbie G. approached respondent on April 25, 2007 and asked if her mother could be
15 tested for a UTI, because her mother was experiencing familiar signs, symptoms, and discomfort,
16 associated with a UTI. Respondent informed Debbie G. that the April 10, 2007, UTI test was
17 negative and that the pain and symptoms were a result of diaper rash, and declined to order the
18 test. Debbie G. asked respondent to administer to her mother the (doctor ordered) pain
19 medication for Selma D.'s bladder pain and general discomfort. Respondent offered a choice
20 between two pain medications and administered a pain pill for general discomfort. On that
21 occasion, respondent failed to make an assessment of the patient's condition or to call the
22 patient's physician. On April 26, 2007, Debbie G. advised respondent that Selma D. experienced
23 extreme burning pain during urination and again requested a UTI test. Respondent declined to
24 provide the test and in response to Debbie G's request, administered two different pain
25 medications, without performing an examination. On that occasion, respondent was again
26 unresponsive to the daughter's concerns. On April 27, 2007, Debbie G. observed Selma D.

27 ¹ Initials are used to protect the privacy of the patient. The full name will be provided following a request
28 for discovery.

1 crying from pain and asking her for "help." Debbie G. telephoned Selma D.'s doctor directly,
2 and a UTI test was ordered. The UTI test revealed an extreme yeast infection and bladder
3 infection. Antibiotics were administered. Respondent's failure to respond to Debbie G.'s
4 concerns regarding her mother and failure to make an assessment of the change in Selma D.'s
5 condition constitutes gross negligence.

6 B. **Wanda B.**, was a female patient at Mabie Skilled Nursing Facility with diagnoses that
7 included dementia, paralysis on one side from a stroke, and a documented assessment of poor
8 short and long term memory and moderately impaired decision making skills. Wanda B. had a
9 doctor's order dated May 1, 2007, that provided for self-administration of medication under
10 supervision of a licensed nurse. On or about May 3, 2007, respondent placed two cups of liquid
11 medication and one medicine cup of pills on Wanda B's dinner tray and left the facility on a
12 dinner break without observing Wanda B. take her medications. A dietary worker found said
13 medications on Wanda B's dinner tray and returned them to the nursing station. Respondent's
14 failure to properly administer medications to the patient by leaving them on the patient's dinner
15 tray without oversight or supervision constitutes gross negligence.

16 C. **Unknown Patient** – On or before August 24, 2007, respondent left skin cream in the
17 patient's room and rudely and/or abruptly told the patient to apply the skin cream herself. The
18 doctor's order did not call for self-application of the cream. The patient became upset and tearful
19 because of respondent's behavior and reported it to her social worker. Respondent's failure to
20 administer treatment to the patient by applying the skin cream constitutes gross negligence.

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

- 24 1. Revoking or suspending Registered Nurse License Number 625510, issued to
25 Rosemary Gonzales-Bustillos.
- 26 2. Ordering Rosemary Gonzales-Bustillos to pay the Board of Registered Nursing the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 11/10/09

Louise R. Bailey
LOUISE R. BAILEY, M.ED., R.N.
Interim Executive Officer
Board of Registered Nursing
State of California
Complainant

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